
Introduced by Senator Hollingsworth

February 23, 2006

An act to amend Section 288 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1455, as introduced, Hollingsworth. Sex offenses: minors.

Under existing law, any person who willfully and lewdly commits a lewd or lascivious act upon or with the body of a child who is under 14 years of age, with the intent of arousing, appealing to, or gratifying the sexual desires of that person or the child, is guilty of a felony, punishable by imprisonment for 3, 6, or 8 years.

This bill would make a technical, nonsubstantive change to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 288 of the Penal Code is amended to
2 read:
3 288. (a) Any person who willfully and lewdly commits any
4 lewd or lascivious act, including any of the acts constituting other
5 crimes provided for in Part 1, upon or with the body, or any part
6 or member thereof, of a child who is under the age of 14 years,
7 with the intent of arousing, appealing to, or gratifying the lust,
8 passions, or sexual desires of that person or the child, is guilty of
9 a felony and shall be punished by imprisonment in the state
10 prison for three, six, or eight years.
11 (b) (1) Any person who commits an act described in
12 subdivision (a) by use of force, violence, duress, menace, or fear

1 of immediate and unlawful bodily injury on the victim or another
2 person, is guilty of a felony and shall be punished by
3 imprisonment in the state prison for three, six, or eight years.

4 (2) Any person who is a caretaker and commits an act
5 described in subdivision (a) upon a dependent person by use of
6 force, violence, duress, menace, or fear of immediate and
7 unlawful bodily injury on the victim or another person, with the
8 intent described in subdivision (a), is guilty of a felony and shall
9 be punished by imprisonment in the state prison for three, six, or
10 eight years.

11 (c) (1) Any person who commits an act described in
12 subdivision (a) with the intent described in that subdivision, and
13 the victim is a child of 14 or 15 years, and that person is at least
14 10 years older than the child, is guilty of a public offense and
15 shall be punished by imprisonment in the state prison for one,
16 two, or three years, or by imprisonment in a county jail for not
17 more than one year. In determining whether the person is at least
18 10 years older than the child, the difference in age shall be
19 measured from the birth date of the person to the birth date of the
20 child.

21 (2) Any person who is a caretaker and commits an act
22 described in subdivision (a) upon a dependent person, with the
23 intent described in subdivision (a), is guilty of a public offense
24 and shall be punished by imprisonment in the state prison for
25 one, two, or three years, or by imprisonment in a county jail for
26 not more than one year.

27 (d) In any arrest or prosecution under this section or Section
28 288.5, the peace officer, district attorney, and the court shall
29 consider the needs of the child victim or dependent person and
30 shall do whatever is necessary, within existing budgetary
31 resources, and constitutionally permissible to prevent
32 psychological harm to the child victim or to prevent
33 psychological harm to the dependent person victim resulting
34 from participation in the court process.

35 (e) Upon the conviction of any person for a violation of
36 subdivision (a) or (b), the court may *order*, in addition to any
37 other penalty or fine imposed, ~~order~~ the defendant to pay an
38 additional fine not to exceed ten thousand dollars (\$10,000). In
39 setting the amount of the fine, the court shall consider any
40 relevant factors, including, but not limited to, the seriousness and

1 gravity of the offense, the circumstances of its commission,
2 whether the defendant derived any economic gain as a result of
3 the crime, and the extent to which the victim suffered economic
4 losses as a result of the crime. Every fine imposed and collected
5 under this section shall be deposited in the Victim-Witness
6 Assistance Fund to be available for appropriation to fund child
7 sexual exploitation and child sexual abuse victim counseling
8 centers and prevention programs pursuant to Section 13837.

9 If the court orders a fine imposed pursuant to this subdivision,
10 the actual administrative cost of collecting that fine, not to
11 exceed 2 percent of the total amount paid, may be paid into the
12 general fund of the county treasury for the use and benefit of the
13 county.

14 (f) For purposes of paragraph (2) of subdivision (b) and
15 paragraph (2) of subdivision (c), the following definitions apply:

16 (1) “Caretaker” means an owner, operator, administrator,
17 employee, independent contractor, agent, or volunteer of any of
18 the following public or private facilities when the facilities
19 provide care for elder or dependent persons:

20 (A) Twenty-four hour health facilities, as defined in Sections
21 1250, 1250.2, and 1250.3 of the Health and Safety Code.

22 (B) Clinics.

23 (C) Home health agencies.

24 (D) Adult day health care centers.

25 (E) Secondary schools that serve dependent persons and
26 postsecondary educational institutions that serve dependent
27 persons or elders.

28 (F) Sheltered workshops.

29 (G) Camps.

30 (H) Community care facilities, as defined by Section 1402 of
31 the Health and Safety Code, and residential care facilities for the
32 elderly, as defined in Section 1569.2 of the Health and Safety
33 Code.

34 (I) Respite care facilities.

35 (J) Foster homes.

36 (K) Regional centers for persons with developmental
37 disabilities.

38 (L) A home health agency licensed in accordance with
39 Chapter 8 (commencing with Section 1725) of Division 2 of the
40 Health and Safety Code.

1 (M) An agency that supplies in-home supportive services.

2 (N) Board and care facilities.

3 (O) Any other protective or public assistance agency that
4 provides health services or social services to elder or dependent
5 persons, including, but not limited to, in-home supportive
6 services, as defined in Section 14005.14 of the Welfare and
7 Institutions Code.

8 (P) Private residences.

9 (2) “Board and care facilities” means licensed or unlicensed
10 facilities that provide assistance with one or more of the
11 following activities:

12 (A) Bathing.

13 (B) Dressing.

14 (C) Grooming.

15 (D) Medication storage.

16 (E) Medical dispensation.

17 (F) Money management.

18 (3) “Dependent person” means any person who has a physical
19 or mental impairment that substantially restricts his or her ability
20 to carry out normal activities or to protect his or her rights,
21 including, but not limited to, persons who have physical or
22 developmental disabilities or whose physical or mental abilities
23 have significantly diminished because of age. “Dependent
24 person” includes any person who is admitted as an inpatient to a
25 24-hour health facility, as defined in Sections 1250, 1250.2, and
26 1250.3 of the Health and Safety Code.

27 (g) Paragraph (2) of subdivision (b) and paragraph (2) of
28 subdivision (c) apply to the owners, operators, administrators,
29 employees, independent contractors, agents, or volunteers
30 working at these public or private facilities and only to the extent
31 that the individuals personally commit, conspire, aid, abet, or
32 facilitate any act prohibited by paragraph (2) of subdivision (b)
33 and paragraph (2) of subdivision (c).

34 (h) Paragraph (2) of subdivision (b) and paragraph (2) of
35 subdivision (c) do not apply to a caretaker who is a spouse of, or
36 who is in an equivalent domestic relationship with, the dependent
37 person under care.

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